474; *Mallette v. Scheerer* (1916) 164 Wis. 160 N. W. 182. See Professor Barbour, *The Extra-Territorial Effect of the Equitable Decree* (1919) 17 MICH. L. REV. 527.

EQUITY—JURISDICTION—POWER TO CREATE A PRIMARY RIGHT—SEPARATION AGREEMENT.—A separation agreement provided for a fixed payment of $700 a month to the wife, and that in case of "any material change in the circumstances of either of the parties hereto either party hereto shall have the right to apply to any court of competent jurisdiction for a modification" of the sum to be paid. Later the wife became wealthy by reason of her stocks in companies making war profits, and the husband's business as a New York real estate lawyer was largely destroyed by war conditions. The husband brought a bill in equity for specific enforcement of the contract, asking that the sum to be paid should be greatly reduced. *Held,* that the plaintiff was not entitled to the relief asked. *Stoddard v. Stoddard* (1919, N. Y.) 124 N. E. 91.

It was the court's opinion that it had no jurisdiction to reduce the sum to be paid and thus modify the contract; this not being a matrimonial action to determine alimony. It is clear that jurisdiction cannot be conferred upon a court by mere consent or waiver or agreement of the parties. *Eaton v. Eaton* (1919, Mass.) 124 N. E. 37. It is no doubt true, also, that in general a court has no jurisdiction to create a *primary* right. The operative facts sufficient to create the legal relation must exist before action. In the present case the court believed that the contract created a primary right in the wife to $700 a month, no more and no less, and that the clause providing for modification was an attempt to confer upon a court jurisdiction to create a different primary right. On this theory the legally operative fact creating a privilege in the husband to pay less than $700 would be not the new circumstances of the parties, but the decree of the court itself. It would seem not unreasonable, however, to construe the contract to mean that the new circumstances shall operate to reduce the wife's right to a "reasonable sum." If so construed, the contract should be enforceable, just as contracts to pay a reasonable price are enforced, the amount being left to the jury. See *Joy v. St. Louis* (1891) 138 U. S. 1, 11 Sup. Ct. 243. This construction, however, seems to deprive the plaintiff of any right to relief in equity; for he needs only to refuse to pay more than the reasonable sum and has a good defence when sued for more. Of course, there is uncertainty as to how much he should tender, and it would be of advantage if he could get a declaratory judgment establishing the exact extent of his duty and of the wife's right. See Borchard, *The Declaratory Judgment* (1918) 28 YALE LAW JOURNAL, 1, 105. In *Kelso v. Kelly* (1860, N. Y. C. P.) 1 Daly, 419, the parties had agreed on the renewal of a lease with an arbitration to fix the rental, but the defendant refused to appoint an arbitrator. The court decreed specific performance and itself fixed the amount of the rental. This decree seems to create a primary right; for, by the contract, the finding of an arbitrator was a condition precedent to an enforceable duty to pay rent. It is possible, however, to distinguish the case on the ground that the defendant had committed a breach of an existing primary duty to appoint an arbitrator, and that the jurisdiction of the court to compel payment of a reasonable sum fixed by the court was created by this breach and not by agreement. Like *Kelso v. Kelly* are *Gregory v. Mighell* (1811, Eng. Ch.) 18 Ves. 328; *Johnson v. Conger* (1861, N. Y. Gen. T.) 14 Abb. Pr. 195.

LABOR UNIONS—INJUNCTIONS AGAINST BOYCOTTS.—The plaintiff refused to accede to a request by the defendant union that he employ only union men in his drayage business. Whereupon, the union ordered its members to have

no dealings with the plaintiff and notified the business men in the community that, unless they withdrew their custom from the plaintiff, they might expect labor trouble with their own employees. The plaintiff brought suit to enjoin these practices. *Held,* that the defendant union should be enjoined from violating the plaintiff's "free liberty to contract." *Auburn Draying Co. v. Wardell* (1919, N. Y.) 124 N. E. 97.

An individual is privileged to withdraw his patronage from anyone he wishes, but he may not go farther and, by threats or intimidation, induce third parties to cease their dealings. *Peek v. Northern Pacific R. R.* (1915) 51 Mont. 295, 152 Pac. 421; *Krigbaum v. Sbarbaro* (1913) 23 Calif. App. 427, 138 Pac. 364. He may not even carry out his purpose by setting up a rival business to attract customers where his motive is to maliciously destroy a settled business and not to engage in honest competition. *Tuttle v. Buck* (1909) 107 Minn. 145, 119 N. W. 946; *Boggs v. Duncan-Schell Furniture Co.* (1913) 163 Iowa, 106, 143 N. W. 482. The same principles apply to a labor union's attempts to boycott a hostile business. The members of a union are privileged to combine in an agreement to cease dealing with the enemy. *Wilson v. Hey* (1908) 232 Ill. 389, 83 N. E. 928; *Mills v. U. S. Printing Co.* (1904) 99 App. Div. 605, 91 N. Y. Supp. 185. Such action is known as the primary boycott and the privilege to pursue it rests upon exactly the same grounds as the analogous privilege to go on strike. Martin, *The Modern Law of Labor Unions* (1910) sec. 71. But when the union goes farther and attempts to induce outsiders to act with them, they are in the field of the secondary boycott where privileges are few. The use of force, threats, or intimidation is enjoinable. *My Maryland Lodge v. Adt* (1905) 100 Md. 238, 59 Atl. 721; *Beck v. Railway Teamsters' Union* (1898) 118 Mich. 497, 77 N. W. 13. And the courts are quick to perceive the possibility of force in any action. The publication of a business as "unfair" has been construed as a threat and enjoined. *American Federation of Labor v. Buck's Stove and Range Co.* (1909, D. C.) 33 App. Cas. 83. But where the action of the union is in the form of a mere request to the public to withdraw patronage, no injunction will issue. *Heitkamper v. Hoffman* (1917) 99 Misc. Rep. 543, 164 N. Y. Supp. 533; *Pierce v. Stablemen's Union* (1909) 156 Calif. 70, 103 Pac. 324. These cases emphasize the fact that there must be the element of force in any true boycott, a fact which is often lost sight of in the popular use of the word. *Lohse Patent Door Co. v. Fuelle* (1908) 215 Mo. 421, 114 S. W. 997.

LIENS—MECHANICS LIENS—PAYMENT BY OWNER.—The defendant made payment to a contractor with instructions that the latter pay the plaintiff, the material man, and discharge the lien which had accrued in favor of the plaintiff for the material which went into defendant's house. The contractor paid the plaintiff without giving instructions as to the application of the money; the plaintiff applied it to a former debt of the contractor and then sought to assert his lien against defendant's house. *Held,* that he could not. *Farr v. Weaver* (1919, W. Va.) 99 S. E. 395.

It is well settled that when a debtor pays and does not specify to what debt the payment is to be applied, the creditor may apply it to any of them. *Jefferson v. Church of St. Matthew* (1889) 41 Minn. 392, 43 N. W. 74; *Thacker v. Bullock Lumber Co.* (1910) 140 Ky. 463, 131 S. W. 271. So it has been held, in opposition to the instant case, that where the material man does not know the source of the payment, he does not have to apply it to the cancelling of his lien against the owner who advanced the money. *Thacker v. Bullock, supra.* But there is authority for the converse; that although the material man